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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF CISCO'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S TRIAL
BRIEF RE: ANALYTIC DISSECTION
AND FILTRATION**

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. ("Cisco"). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco's Motion to File Under Seal Confidential information filed connection with Cisco's Trial Brief re: Analytic Dissection and Filtration. I make this declaration in accordance with Civil Local Rule 79-5(d)(1)(A).

3. Cisco's Trial Brief is non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a "particularized showing" under the "good cause" standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing "establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law" (*i.e.*, that the document is "sealable"). Civil L.R. 79-5(b). The sealing request must also "be narrowly tailored to seek sealing only of sealable material." *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in the Sealing Motion as containing Cisco's confidential information, also set forth below, because the information sought to be sealed reflects confidential information that "give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it." *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b):

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions	Arista
Exhibit A to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions This document was previously filed and the Court has already granted the sealing of the highlighted portions of this document. Dkt. 487 at 5-10.	Cisco Arista
Exhibit C to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions	Arista
Exhibit F to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions	Arista
Exhibit G to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Cisco Arista
Exhibit H to the Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions This document was previously filed and the Court has already granted the sealing of the highlighted portions of this document. Dkt. 487 at 10-13.	Cisco Arista
Exhibit 1 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions This document was previously filed and the Court has already granted the sealing of the highlighted portions of this document. Dkt. 487 at 14-15.	Cisco

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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibit 2 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Highlighted Portions	Cisco
Exhibit 4 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Arista
Exhibit 11 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Arista
Exhibit 13 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Cisco
Exhibit 16 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Arista
Exhibit 17 to the Declaration of Drew Holmes in Support of Cisco's Trial Brief Re: Analytic Dissection	Entire	Arista

5. Exhibit A to the Declaration of Kevin C. Almeroth is a copy of his Opening report dated June 3, 2016 which was designated as Highly Confidential Attorneys' Eyes Only under the Protective Order. The Court has already granted a prior motion to seal the highlighted portions of this exhibit. Dkt. 487 at 5-10. As Cisco did before, Cisco seeks to seal paragraphs Cisco supports the sealing of paragraphs 83-86 of this exhibit. Paragraphs 83-86 contain Cisco's confidential

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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
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1 source code. As such, there are compelling reasons to seal these paragraphs. *See Agency*
2 *Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source
3 code is “undoubtedly a trade secret” within the sealing context.)

4 **6.** Exhibit G to the Declaration of Kevin C. Almeroth is Exhibit 6 to Dr. Almeroth’s
5 Opening report, which was designated as Highly Confidential Attorneys’ Eyes Only under the
6 Protective Order. Cisco seeks to seal the entirety of this exhibit as it contains Cisco’s confidential
7 source code. As such, there are compelling reasons to seal this exhibit. *See Agency*
8 *Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source
9 code is “undoubtedly a trade secret” within the sealing context.)

10 **7.** Exhibit H to the Declaration of Kevin C. Almeroth is a copy of his Rebuttal report
11 dated June 17, 2016 which was designated as Highly Confidential Attorneys’ Eyes Only under the
12 Protective Order. The Court has already granted a prior motion to seal the highlighted portions of
13 this exhibit. Dkt. 487 at 10-13. As Cisco did before, Cisco seeks to seal paragraphs Cisco
14 supports the sealing of the highlighted portions of paragraphs 164-166. Paragraphs 164-166
15 contain confidential information about the technology and architecture of Cisco’s products. As
16 such, there are compelling reasons to seal the highlighted portions of these paragraphs. *See*
17 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
18 20, 2014) (“highly sensitive information regarding [a party’s] product architecture and
19 development” are sealable under the heightened standard for dispositive motions.)

20 **8.** Exhibit 1 to the Holmes Declaration is an excerpt of the opening expert report of
21 Arista’s technical expert Dr. John Black, which was designated as Highly Confidential Attorneys’
22 Eyes Only under the Protective Order. The Court has already granted a prior motion to seal the
23 highlighted portions of this exhibit. Dkt. 487 at 14-15. As Cisco did before, Cisco seeks to seal
24 the highlighted portions of this exhibit which contain discussions of Cisco’s confidential source
25 code and discussions of related confidential third-party source code. As such, there are
26 compelling reasons to seal the highlighted portions of these paragraphs. *See Delphix Corp. v.*

1 *Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (“highly
2 sensitive information regarding [a party’s] product architecture and development” are sealable
3 under the heightened standard for dispositive motions.)

4 **9.** Exhibit 2 to the Holmes Declaration is copy of Cisco’s Supplemental Exhibit F to
5 Cisco’s Supplemental Responses to Interrogatory Nos. 16 & 19, which was designated as Highly
6 Confidential Attorneys’ Eyes Only under the Protective Order. The highlighted portions of
7 exhibit 2 contain Cisco’s confidential source code. The Court has already granted a motion to seal
8 these portions. Compelling reasons exist to seal the highlighted portions of this exhibit. *See*
9 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
10 20, 2014) (“highly sensitive information regarding [a party’s] product architecture and
11 development” are sealable under the heightened standard for dispositive motions.)

12 **10.** Exhibit 13 to the Holmes Declaration is an excerpt from the deposition of Phillip
13 Remaker which was designated as Highly Confidential Attorneys’ Eyes Only under the Protective
14 Order. This excerpt contains confidential information about Cisco’s product development. As
15 such, compelling reasons exist to seal the highlighted portions of this document. *See Delphix*
16 *Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014)
17 (“highly sensitive information regarding [a party’s] product architecture and development” are
18 sealable under the heightened standard for dispositive motions.)

19 **11.** Cisco also files this motion to seal to provide Arista Networks, Inc. the opportunity
20 to file a declaration pursuant to Civil Local Rule 79-5(e) regarding the confidentiality of the other
21 documents identified in the chart above.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in Redwood Shores,
3 California, on November 8, 2016.

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5 /s/ Sara E. Jenkins
6 Sara E. Jenkins
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DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: November 8, 2016

/s/ John M. Neukom
John M. Neukom